

I have no reason to believe that, as a matter of policy, Mr. Gompert won't elect to notify the full SSCI, regardless of the statutory interpretations of the general counsel. Nonetheless, this confirmation process should serve to remind Mr. Gompert and other leaders of the intelligence community that those clear statutory obligations apply to them, regardless of the general counsels' misinterpretation of the law and regardless of the practices of the previous administration. These obligations are consistent with basic notions of statutory interpretation. They are also consistent with recent testimony before the House Permanent Select Committee on Intelligence by two experts on congressional notifications, both of whom worked on the Church Committee. Frederick "Fritz" Schwarz testified that the "Gang of Eight" provision "should be read as limited to covert action" and noted CIA Director Panetta's testimony at his confirmation hearing supporting this view. Britt Snider's testimony traced the entire history of the provision, describing amendments passed in 1991 and noting that he was general counsel of the Senate Select Committee on Intelligence at the time of the amendments and was "heavily involved in their development."

Another important change brought about by the 1991 amendments limited the "gang of 8" option to covert actions, rather than making it available to notify the committees of any intelligence activity that was particularly sensitive. This was done for several reasons. First, the gang of 8 option had, to that point, only been used for covert action. Sensitive collection programs had been briefed to the committees as a whole. The view on the two intelligence committees was that if an agency was instituting a new, ongoing program to collect intelligence, they all needed to know about it, regardless of its sensitivity. This was what the committees were set up to do. They had to authorize the funding for these programs. How could they not know of them? Again, the [George H.W.] Bush Administration did not resist the change . . . There have been no major changes to the congressional notification requirements since the 1991 Amendments. But I think it is fair to say that practice under the law has changed over time. It changed, for example, in the late 1990s when the CIA began to disclose more information to the committees about its collection operations, especially those that were experiencing problems. (Emphasis added.)

Both the plain language of the statute and its history are thus clear. Moreover, the practice of violating the statute in this manner is not longstanding; it was limited to the George W. Bush administration. It is therefore particularly dangerous for the current administration and any current leaders of the intelligence community to associate themselves with this misinterpretation of the law.

TRIBUTE TO CHAIRMAN SCHAPIRO AND COMMISSIONER AGUILAR

Mr. KAUFMAN. Madam President, I rise today primarily to note for the RECORD two recent speeches: one by Chairman Mary Schapiro and the second by SEC Commissioner Luis Aguilar.

Last year, rapid changes in the markets, opaque practices, and a lack of effective regulation caused a devastating financial debacle from which our Nation is still struggling to recover.

The lesson was simple: when our regulators fail to keep pace with market developments and are taken off the field, the consequences can be disastrous.

With this lesson in mind, I wrote to Chairman Mary Schapiro on August 21 urging the Securities and Exchange Commission to undergo a comprehensive "ground up" review of a broad range of market structure issues in order to ensure our regulatory capacity is up to speed with changes in the market.

I am pleased that the SEC is in the process of conducting such a review and has already acted to address flash orders and dark pools, two sources of potential unfairness that are opaque and insufficiently regulated. But a few narrowly tailored rule proposals are not enough to restore investor confidence and avert a future disaster. We need regulators, lawmakers, and investors to embrace a new approach to regulation—one that values fairness and transparency over liquidity and nips systemic risks in the bud.

Accordingly, I applaud Chairman Schapiro's speech, entitled "The Road to Investor Confidence," which she delivered at the Securities Industry and Financial Markets Association annual conference on October 27.

Chairman Schapiro outlined the road towards a lasting regulatory framework and a fairer market, asserting:

To me, we don't get there by assuming all is well now, and reverting to the practices that got us to where we are. We don't get there by letting newly engineered financial instruments escape the umbrella of regulation and the natural disinfectant of meaningful market transparency. And, we certainly don't get there by permitting, or even advocating, for gaps in our regulatory landscape. I believe those are the directions that send us back to another financial crisis. And, we cannot afford to let that happen.

Chairman Schapiro also discussed the importance of adopting a forward-looking approach to regulation, particularly with respect to rapid technological developments like high frequency trading.

She said:

I believe we need a deeper understanding of the strategies and activities of high frequency traders and the potential impact on our markets and investors of so many transactions occurring so quickly.

Following the chairman's lead, Commissioner Aguilar also struck a thoughtful chord with respect to upcoming regulatory reform in an impressive speech delivered at George Washington University Law School last Friday.

Commissioner Aguilar underscored the need for meaningful reform, stating:

[T]here is a growing concern that we might miss the opportunity to make the transformational changes required to address the realities of today's financial markets—and to prepare for the unforeseen challenges of tomorrow. Moreover, I fear that we may go

down the path of piecemeal changes that give the illusion of regulatory reform but leave us in danger of repeating our recent history. This "false comfort" would be a recipe for disaster.

Commissioner Aguilar also highlighted specific recommendations that should guide financial reform efforts. He asserted the focus of systemic risk regulation should be on investor protection and, should ensure "the continuation of systemically important market functions, not institutions. . . . To that end, systemic risk regulation should facilitate an environment where no institution is indispensable and where other firms can step in to meet the needs of the market."

Commissioner Aguilar went on to endorse the creation of a council of regulators which would better "identify accumulation of risks . . . [provide] for a diversity of perspectives that could make it more likely that a risk will be identified . . . facilitate the free flow of information among regulators . . . [and] avoid the inherent tensions and conflicts that arise when one regulator has combined responsibilities over monetary policy, a vested interest in the safety and soundness of particular institutions, and plenary powers to address systemic risk."

In addition to laying the foundation for systemic risk regulation, Commissioner Aguilar also maintained that regulators must be empowered to address a broad range of market practices, like hedge funds and asset-backed securities, for example, in order to "not only close today's gaps but to look ahead and [use] flexible powers that can be deployed as an unknown future unfolds."

Undoubtedly, reform is long overdue, and so I am pleased this body appears set to undertake financial regulatory reform legislation in the coming months. I look forward to working with my colleagues to enact meaningful reforms.

With Chairman Schapiro and Commissioner Aguilar's words as a guide, Congress should grant regulators the authority to ensure our markets are fair, stable and transparent in order to prevent another disaster. Mr. President, failure to do so is simply not an option.

Madam President, Chairman Schapiro and Commissioner Aguilar's speeches may be found at: <http://www.sec.gov/news/speech/2009/spch102709mils.htm> (Schapiro) <http://www.sec.gov/news/speech/2009/spch106091aa.htm> (Aguilar).

TRIBUTE TO TIM JOHNSON

Mr. LEAHY. Madam President, a voice familiar to thousands of Vermonters was singled out for special recognition this past weekend.

Tim Johnson, a broadcaster who has long made Brattleboro's WTSA Radio